Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	
	)	

SECOND REPORT AND ORDER AND FIRST ORDER ON RECONSIDERATION

Adopted: February 10, 2005 **Released: February 23, 2005**

By the Commission: Chairman Powell, Commissioners Abernathy and Adelstein issuing separate statements; Commissioner Copps concurring and issuing a separate statement; Commissioner Martin approving in part, dissenting in part and issuing a separate statement.

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I. INTRODUCTION

1. In this Second Report and Order and First Order on Reconsideration, we consider several petitions for reconsideration[1] of the Commission's *First Report and Order* and the various comments submitted in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[2]

[1] *See* 47 C.F.R. § 1.429 (setting forth basis for granting petitions for reconsideration).

[2] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, etc., 16 FCC Rcd 2598 (2001) (hereinafter "*First Report and Order*" or "*Further Notice*") (both the *First Report and Order* (continued....)

The actions taken in this order are limited to two significant issues, the resolution of which are essential to the Commission's ongoing efforts to complete the transition from analog to digital television.[3] In the interest of providing certainty on these significant issues at this time, we are deferring resolution of the other issues raised on reconsideration and in the *Further Notice* to a future order.[4] The two issues resolved in this order are: (1) whether cable operators are required to carry both the digital and analog signals of a station during the transition when television stations are still broadcasting analog signals (also generally referred to as the "dual carriage" issue); and (2) how to construe the "primary video" carriage limitation under Sections 614(b)(3)(A) (for commercial stations) and 615(g)(1) (for noncommercial

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and *Further Notice* were issued in a single order). A list of the parties that submitted comments and replies in response to the *Further Notice* appear in Appendices A and B, respectively, *infra*.

[3] Since release of the *First Report and Order* and *Further Notice*, the Commission has issued several Orders to further facilitate the transition from analog to digital television:

- On August 8, 2002, the Commission released an Order establishing digital broadcast tuner requirements. *See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 17 FCC Rcd 15978 ("*Digital Tuner Second Report and Order*"). The Order requires that all TV receivers manufactured or shipped in the U.S. with screen sizes greater than 13 inches must be capable of receiving DTV signals over-the-air no later than July 1, 2007. This requirement is phased in, beginning with the largest sets in 2004.

- On October 9, 2003, the Commission released an Order establishing rules for digital "plug and play" cable compatibility. *See Implementation of Section 304 of the Telecommunications Act of 1996 -- Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885 ("*Plug-and-Play Cable Compatibility Second Report and Order*"). The Order adopts the proposed technical, labeling, and encoding rules contained in the Memorandum of Understanding between the cable and consumer electronics industries with certain modifications. Resolution of issues raised for comment in a Second Further Notice in this proceeding is pending. Additionally, petitions for reconsideration of the Order are pending before the Commission, and related appeals have been filed and remain pending with the U.S. Court of Appeals for the District of Columbia Circuit (docket No. 04-1033 (D.C. Cir. Jan. 27, 2004)).

- On November 4, 2003, the Commission established a redistribution control content protection system for digital broadcast television. *See Digital Broadcast Content Protection*, 18 FCC Rcd 23550 ("*Broadcast Flag Order*"). Petitions for reconsideration of this order are pending before the Commission, and related appeals have been filed and remain pending with the U.S. Court of Appeals for the District of Columbia Circuit (docket No. 04-1037 (D.C. Cir. Jan. 30, 2004)).

- On September 7, 2004, the Commission established the procedures for channel elections, set deadlines for replication and maximization, required broadcasters to use PSIP (program and system information protocol), and took other actions necessary to continue the progress towards completing the digital transition. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 ("*Second DTV Periodic Review*").

- On September 30, 2004, the Commission released an Order establishing technical and operational rules for digital LPTV and digital TV translator stations and modified certain rules applicable to Class A TV stations. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 19 FCC Rcd 19331 ("*Digital LPTV Report and Order*").

[4] The petitions also request reconsideration or clarification of the *First Report and Order* with respect to the Commission's decisions on PSIP carriage and channel numbering, carriage of program-related material, material degradation, and down-conversion of digital-only stations, in addition to other issues. A list of the parties that filed petitions, oppositions, and other comments in the reconsideration proceeding appear in Appendix C, *infra*.

stations) under the Act if a broadcaster chooses to broadcast multiple digital television streams (this issue is generally referred to as the mandatory multicast carriage issue).[5]

2. With respect to the dual carriage issue, we determined in the First Report and Order that the statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals.[6] Furthermore, we tentatively concluded that, based on the available record evidence, a dual carriage requirement would likely violate the cable operator's First Amendment rights.[7] In order to evaluate the issue more fully, we adopted the *Further Notice* to solicit comment on the constitutionality of imposing a dual carriage requirement.[8] Several members of the broadcast industry seek reconsideration of the Commission's statutory interpretation on this issue, and urge us to conclude that the Act mandates dual carriage. For the reasons provided in this order, we are denying the petitions on this issue and affirm our tentative decision not to impose a dual carriage requirement.

3. With respect to the mandatory multicast carriage issue, the Commission, in the *First Report and Order*, interpreted the statutory term "primary video" to mean only a single programming stream.[9] As a result, if a digital broadcaster elects to divide its digital spectrum into several separate, independent, and unrelated programming streams, the Commission found that only one of these streams is considered primary and entitled to mandatory carriage. Several members of the broadcast industry seek reconsideration of our statutory interpretation. For the reasons provided below, we are also denying the petitions on this issue and thereby affirm our decision in the *First Report and Order*.

II. BACKGROUND

4. Sections 614 and 615 of the Act govern mandatory carriage for cable operators. Section 614(b)(4)(B) requires:

> At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.[10]

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[5] *See* 47 U.S.C. §§ 534(b)(3)(A), 535(g)(1).

[6] *See* 16 FCC Rcd at 2600.

[7] *See id.*

[8] *See id.* at 2649-50. The *Further Notice* also solicited comment on other carriage issues, including outstanding issues initially raised in the *Digital Must Carry NPRM*, 13 FCC Rcd 15092 (1998), such as: the definition of substantial duplication in the digital television context, the tier placement of digital broadcast signals, retransmission consent agreements between broadcasters and small cable operators, satellite carriage requirements, and other relevant carriage issues. *See Further Notice*, 16 FCC Rcd at 2647-49, 2651-58.

[9] *See* 16 FCC Rcd at 2622.

[10] 47 U.S.C. § 534(b)(4)(B). The limited discussion of this provision in the Act's legislative history states that "when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast high definition television (HDTV), it shall conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified standards in accordance with the objectives of this section." H.R. Rep. No. 102-862, 102d Cong., 2d Sess. at 67 (1992). *See* H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 94 (1992); S. Rep. No. 102-92, 102d Cong., 1st Sess. at 85 (1991).

5. Our task in this ongoing proceeding is to determine how to implement and apply the statute to digital signals during the transition as well as after the transition is completed. Our approach is guided by Title VI of the Act, which states, in part, that "cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public."[11] In addition, we are directed to "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems."[12]

6. The law governing retransmission consent generally prohibits cable operators and other multichannel video programming distributors, such as satellite carriers, from retransmitting the signal of a commercial television station, unless the station whose signal is being transmitted consents or chooses mandatory carriage.[13] Generally, every three years, commercial television stations must elect to either grant retransmission consent or pursue their mandatory carriage rights.[14]

7. Under Section 614 of the Act, and the implementing rules adopted by the Commission, a commercial television broadcast station is entitled to request mandatory carriage, if it does not elect retransmission consent, on cable systems located within the station's market.[15] A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.[16] Systems with more than 12 usable activated channels must carry local commercial television stations "up to one-third of the aggregate number of usable activated channels of such system[s]."[17] Beyond this requirement, the carriage of additional television stations is at the discretion of the cable operator. In addition, Section 615 of the Act requires cable systems to carry local noncommercial educational television stations ("NCE" stations) according to a different formula, and based upon a cable system's number of usable activated channels.[18] Carriage of NCE stations are in addition to the one-third cap that applies to full power

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[11] 47 U.S.C. § 521(4). *See Associated Press v. United States*, 326 U.S. 1, 20 (1945) (In a free speech challenge to the Sherman Act's application to the print media, the Court held that the "[First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."); *Turner Broadcasting Systems, Inc. v. FCC,* 512 U.S. 622, 663 (1994) ("*Turner I*") (In upholding the 1992 Cable Act carriage provisions, the Supreme Court held that access to a multiplicity of information sources, from broadcast stations and others, promotes values central to the First Amendment.).

[12] 47 U.S.C. § 521(6).

[13] *See* 47 U.S.C. §§ 325(b)(1)(A) and (B).

[14] *See* 47 C.F.R. § 76.64(f).

[15] *See* 47 U.S.C. § 534; *Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965 (1993) ("*Cable Must Carry Order*"). *See also Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723 (1994) ("*Cable Must Carry Reconsideration Order*").

[16] A DMA is a geographic market designation that defines each television market exclusive of others based on measured viewing patterns.

[17] 47 U.S.C. § 534(b)(1)(B); *see* 47 C.F.R. § 76.56(b)(2). The Act requires that, in general, "[a] cable operator of a cable system with 12 or fewer usable activated channels must carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station." 47 U.S.C. § 534(b)(1)(A); *see* 47 C.F.R. § 76.56(b)(1) (same).

[18] Noncommercial television stations are considered qualified, and may request carriage if: (1) they are licensed to a community within 50 miles of the principal headend of the cable system; or (2) place a Grade B contour over the cable operator's principal headend. Cable systems with: (1) 12 or fewer usable activated channels are required to carry the signal of one qualified local noncommercial educational station; (2) 13-36 usable activated channels are required to carry no more than three qualified local noncommercial educational stations; and (3) more than 36 usable activated channels shall carry at least three qualified local noncommercial educational stations. *See* 47 U.S.C. §§ 535(b) and (e); 47 C.F.R. § 76.56(a).

commercial stations.[19] Low power television stations, including Class A stations, may request carriage if they meet six statutory criteria.[20] Among these criteria are that the low power TV station meets all of the Commission's requirements that are applicable to full power TV stations with respect to certain types of programming, such as children's and political programming, and "the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license."[21]

8. Cable operators are required to carry local analog television stations on a tier of service provided to every subscriber[22] and on certain channel positions designated in the Act.[23] Cable operators are prohibited from degrading a television station's signal,[24] but are not required to carry duplicative signals[25] or video that is not considered primary.[26] Television stations may file complaints with the Commission against cable operators for non-compliance with Sections 614 and 615.[27] In addition, cable operators and television stations alike may file petitions to either expand or contract a commercial television station's market for broadcast signal carriage purposes.[28] These statutory requirements were implemented by the Commission in 1993,[29] and are reflected in Sections 76.56 to 76.64 of the Commission's rules.[30]

III. CARRIAGE OF DIGITAL BROADCAST SIGNALS

A. Stations Broadcasting in Analog and Digital

9. A fundamental issue addressed in the *First Report and Order* and in the *Further Notice* is whether cable operators are required to carry both the analog and digital signals of a station during the transition when television stations are broadcasting analog and digital signals.[31] We said therein that if the Commission requires carriage of both analog and digital signals (*i.e.*, "dual carriage"), cable operators could be required to carry double the number of television signals, many of which contain duplicative

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[19] *See* 47 U.S.C. § 535(a).

[20] *See* 47 U.S.C. §§ 534(c)(1) and (h)(2); 47 C.F.R. § 76.55(d). A cable operator, however, cannot carry a low power television station in lieu of a full power television station. *See* 47 U.S.C. §§ 534(b)(1)(A) and (h)(2); 47 C.F.R. §§ 76.56(b)(1) and (b)(4)(i).

[21] 47 U.S.C. § 534(h)(2)(B).

[22] *See* 47 U.S.C. § 534(b)(7); 47 U.S.C. § 535(h).

[23] *See* 47 U.S.C. § 534(b)(6); 47 U.S.C. § 535(g)(5).

[24] *See* 47 U.S.C. § 534(b)(4)(A); 47 U.S.C. § 535(g)(2).

[25] *See* 47 U.S.C. § 534(b)(5); 47 U.S.C. § 535(b)(3)(C).

[26] *See* 47 U.S.C. § 534(b)(3)(A); 47 U.S.C. § 535(g).

[27] *See* 47 U.S.C. §§ 534(d), 535(j). *See also* 47 C.F.R. § 76.61.

[28] *See* 47 U.S.C. § 534(h)(1)(C). *See also* 47 C.F.R. § 76.59.

[29] *See Cable Must Carry Order*, 8 FCC Rcd 2965, *supra* note 15.

[30] *See generally* 47 C.F.R. §§ 76.56 to 76.64.

[31] *See* 16 FCC Rcd at 2603-09, 2649-52.

content, while having to drop or forego carriage of varied cable programming services where channel capacity is limited.[32]

10. In the *First Report and Order*, we examined our authority to impose a dual carriage requirement and determined, after extensive review of Sections 614 and 615 of the Act and the accompanying legislative history, that "the statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals."[33] It is precisely the ambiguity of the statute that has driven contentious policy debate on this issue. In order to weigh the constitutional questions inherent in a statutory construction that would permit dual carriage, we determined that it was appropriate and necessary to more fully develop the record in this regard. It was our tentative conclusion, however, that a dual carriage requirement would burden cable operators' First Amendment rights substantially more than necessary to further the government's substantial interests.[34] We issued a *Further Notice* addressing several critical questions concerning the constitutionality of dual carriage, including: (1) whether a cable operator will have the channel capacity to carry the digital television signal of a station, in addition to the analog signal of that same station, without displacing other cable programming or services[35]; (2) whether market forces, through retransmission consent, will provide cable subscribers access to digital television signals; and (3) how the resolution of the carriage issues would impact the digital transition process.[36] Before considering the additional record and finally determining the dual carriage question, we first address the petitions for reconsideration of our preliminary decision on the statutory issue in the *First Report and Order*.

1. Statutory Analysis

11. Several members of the broadcast industry seek reconsideration of the Commission's statutory interpretation on this issue, and urge us to conclude that the Act mandates dual carriage.[37] Commercial Broadcasters specifically argue that Section 614(a) of the Act makes no distinction between qualifying analog and digital signals, so therefore all local television station signals must be carried.[38]

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[32] *See id.*

[33] *Id.* at 2600.

[34] *See id.*

[35] The *Further Notice* sought information on current usable cable channel capacity and forecasts for capacity growth in the future, and also surveyed 16 cable operators. *See id.* at 2652. The results of the surveys indicate that the majority of cable subscribers are connected to systems with at least 750 MHz capacity, and that operators continue to build out their facilities. It is also clear from the results of the survey and other record evidence that large cable operators have not reached the statutory one-third usable capacity limit for the carriage of local commercial stations' analog signals, and it is unlikely that they will reach the one-third limit, in most instances, even if dual carriage were mandated.

[36] *See id.* at 2600, 2647-54.

[37] *See, e.g.*, Commercial Broadcasters Petition (*i.e.*, joint filing from the National Association of Broadcasters, the Association of Local Television Stations, and Association for Maximum Service Television, Inc.) at 6-9; Broadcast Group Petition (*i.e.*, joint filing from Arizona State University, Benedek Broadcasting Corporation, Midwest Television, Inc., and Raycom Media, Inc.) at 2-4; Noncommercial Broadcasters Petition (*i.e.*, joint filing from Association of America's Public Television Stations, the Public Broadcasting Service, and the Corporation of Public Broadcasting) at 14-18; Paxson Petition at 3-8; Fox Affiliates Comments at 2-4; Tribune Comments at 2.

[38] *See* Commercial Broadcasters Petition at 6-9. *See also* Broadcast Group Petition at 2-3; Commercial Broadcasters Reply at 3-5.

They point out that Section 614(h)(1)(A),[39] which defines the term "local commercial television station," does not expressly exclude DTV signals from carriage during the time that the companion analog signal would be carried.[40] They state that "Section 614 applies to the signals of any full power commercial television station licensed and operating on a channel regularly assigned to its community by the Commission, not otherwise excluded by the terms of Section 614."[41] Furthermore, they assert that the new DTV signals of full power television broadcast stations at issue here were, at the time of the 1992 Cable Act, anticipated to be "licensed and operating on a channel regularly assigned to its community by the Commission."[42] They surmise that if Congress intended to exclude these DTV signals from carriage requirements during the transitional period, it would have so indicated in Section 614.[43] In their view, "[b]ecause the statutory mandate to carry broadcasters' DTV signals is clear, the Commission lacks discretion to water down or modify the express requirement that cable operators carry DTV signals."[44]

12. Cable operators and non-broadcast programmers, on the other hand, ask the Commission to deny petitioners' request for reconsideration of this issue.[45] NCTA argues that, in the absence of a clear statutory directive for dual carriage, the Commission must read the statute to err on the side of avoiding constitutional infirmities.[46] Cable programmer A&E states that if Congress had intended for the Commission to greatly expand the cable industry's carriage burden during the DTV transition, it would have done so much more plainly and explicitly.[47] A&E points out that subsequent congressional actions and relevant legislative histories in the Telecommunications Act of 1996, the Balanced Budget Act of 1997, and the Satellite Home Viewer Improvement Act of 1999, demonstrate that Congress did not intend to compel dual carriage through Section 614(b)(4)(B).[48]

13. The arguments that the parties have presented in support of a statutory reading to require dual carriage essentially are no different from those that have previously been submitted, considered, and rejected in the *First Report and Order*.[49] We therefore affirm our earlier conclusion that the Act is ambiguous on the issue of dual carriage. The statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals.[50] Further, we do not

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[39] Section 614(h)(1)(A) of the Act, 47 U.S.C. § 534(h)(1)(A), states:

> For purposes of this section, the term "local television station" means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

[40] *See* Commercial Broadcasters Petition at 7.

[41] *Id.* (emphasis in original omitted).

[42] *Id.*

[43] *See id.* at 7-8. *See also* Broadcast Group Petition at 14.

[44] Commercial Broadcasters Petition at 8.

[45] *See, e.g.*, NCTA Opposition at 5-8; Time Warner Opposition at 3-11; A&E Comments at 1, 7-9.

[46] *See* NCTA Opposition at 5-8.

[47] *See* A&E Comments at 4.

[48] *See id.* at 5.

[49] *See* 16 FCC Rcd at 2603-09.

[50] *See id* at 2600.

believe that mandating dual carriage is necessary either to advance the governmental interests identified by Congress in enacting Sections 614 and 615 and upheld in *Turner II* or to effectuate the DTV transition. Since no evidence or arguments submitted on reconsideration gives us any reason to question our original judgment, we deny the petitions for reconsideration on this point.

2. Constitutional Analysis

14. As indicated above, the *First Report and Order* held that the Act was ambiguous as to the question of dual carriage and that further fact-finding was necessary to determine the appropriate statutory interpretation.[51] We rely on several constitutional principles and cases, in particular the Supreme Court's decisions in *Turner I* and *Turner II,* in addressing the constitutionality of mandatory dual carriage.[52] The Supreme Court has recognized that mandatory carriage directly interferes with the free speech rights of cable operators and cable programmers.[53] Nevertheless, the *Turner II* Court upheld the constitutionality of Sections 614 and 615 under an intermediate scrutiny analysis. A majority of the Court found that the mandatory carriage provisions of the Act furthered two governmental interests: (1) preserving the benefits of free, over-the-air local broadcast television for viewers; and (2) promoting the widespread dissemination of information from a multiplicity of sources.[54] Significantly, the Court found that mandatory carriage was narrowly tailored because the burden imposed at that time was congruent to the benefits obtained.[55] A plurality of the Court also concluded that Sections 614 and 615 furthered a third governmental interest -- Justice Breyer, whose vote was necessary to sustain the requirement, however, did not believe that must carry was necessary to promote "fair competition," as did the other justices in the majority.[56]

15. In the *First Report and Order*, we recognized that any type of dual carriage rule must satisfy the *Turner* factors and pass the *O'Brien* test[57] for determining whether a content-neutral rule or regulation violates the Constitution.[58] Under the *O'Brien* test, a content-neutral regulation would be upheld if: (1) it furthered an important or substantial governmental interest; (2) the government interest was unrelated to the suppression of free expression; and (3) the incidental restriction on First Amendment freedoms was no greater than is essential to the furtherance of that interest.[59] In sum, under the *O'Brien* test, a regulation must not burden substantially more speech than is necessary to further the government's legitimate interests. We invited commenters that support a dual carriage requirement to submit evidence to show how mandatory dual carriage would satisfy the constitutional requirements of both *Turner* and *O'Brien*. After close examination of the information submitted, we find nothing in the record that would allow us to conclude that mandatory dual carriage is necessary to further the governmental interests

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[51] *See id.* at 2648.

[52] *See Turner I,* 512 U.S. 622, *supra* note 11; *Turner Broadcasting Systems, Inc. v. FCC,* 520 U.S. 180 (1997) (hereinafter "*Turner II*"). *See also Quincy Cable TV, Inc. v. FCC,* 768 F.2d 1434 (D.C. Cir. 1985), *cert. denied,* 476 U.S. 1169 (1986).

[53] *See Turner II,* 520 U.S. at 214, citing *Turner I,* 512 U.S. at 637.

[54] *See Turner II,* 520 U.S. at 189, citing *Turner I,* 512 U.S. at 662.

[55] *See Turner II,* 520 U.S. at 215.

[56] *See id.* at 225-30 (Breyer, J., concurring in part).

[57] *See U.S. v. O'Brien,* 391 U.S. 367, 377 (1968).

[58] *See* 16 FCC Rcd at 2648.

[59] *See O'Brien,* 391 U.S. at 377.

identified in *Turner*, or other potential governmental interests put forward by commenters. In addition, even if it could be shown that dual carriage could further any of the governmental interests based on the current record, the burden that mandatory dual carriage places on cable operators' speech appears to be greater than is necessary to achieve the interests that must carry was meant to serve. Mandatory dual carriage would essentially double the carriage rights and substantially increase the burdens on free speech beyond those upheld in *Turner*. As noted, *Turner II* found the benefits and burdens of must carry to be congruent, such that must carry is narrowly tailored to preserve the multiplicity of broadcast stations for households that do not subscribe to cable.[60]

16. ***Preserving the benefits of free over-the-air television for viewers.*** The first governmental interest identified in *Turner* to support mandatory carriage is the preservation of the benefits of free over-the-air television for non-subscribers.[61] The broadcast industry argues that a slow DTV transition places preservation of over-the-air broadcasting at risk. Commercial Broadcasters assert that the entire premise of the digital transition is for digital signals to replace analog signals. They argue that if viewers are unable to receive digital signals, digital cannot replace analog, and broadcasters will be forced to sustain the operation of two facilities at considerable expense, without any additional revenue.[62] Noncommercial Broadcasters assert that the costs of dual transmissions are overwhelming for smaller television stations.[63]

17. NCTA contends that the broadcast industry sought a second channel of spectrum to provide digital programming, prior to which there was no apparent threat to the preservation of broadcast stations for over-the-air viewers, given that cable operators were required to carry virtually all existing analog stations.[64] International Channel asserts that analog carriage, by itself, serves the government interest in preserving the benefits of free over-the-air television.[65] A&E states that the only reason the Court upheld the analog carriage requirements is that Congress found cable carriage to be necessary to promote the continued availability of free television programming, "especially for viewers who are unable to afford other means of receiving programming."[66]

18. Despite the broadcast parties' assertions, the record as a whole does not demonstrate that television stations would face undue hardship in the absence of dual carriage that would, in turn, threaten

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[60] *See Turner II*, 520 U.S. at 218.

[61] *See id.* at 222.

[62] *See* Commercial Broadcasters FNPRM Comments at 13.

[63] *See* Noncommercial Broadcasters FNPRM Comments at 21. *See also* STC Broadcast FNPRM Comments at 1 ($1.7 million required for the equipment necessary for DTV rollout at its stations in Texas).

[64] *See* NCTA FNPRM Reply Comments at 9.

[65] *See* International Channel FNPRM Comments at 7. Ovation, Inc. points out that television broadcast stations have already received: (1) free spectrum for their analog operations; (2) guaranteed cable carriage of their analog signals; (3) free spectrum for the DTV transition; (4) guaranteed carriage for DTV (upon electing to surrender their analog spectrum); (5) protection from having to pay for cable carriage; (6) guaranteed access to the basic service tier with preferred channel placement; (7) retransmission consent rights that can be leveraged into additional carriage for commonly owned digital and non-broadcast offerings; and (8) the right to use DTV allotments for revenue producing ancillary and supplemental services. Ovation argues that, despite these governmentally-bestowed benefits, broadcasters improperly assert that such regulatory largess is insufficient, and they demand dual carriage to guarantee them a mass audience. *See* Ovation FNPRM Reply Comments at 2.

[66] A&E FNPRM Comments at 9, citing *Turner I*, 512 U.S. at 646.

the ability of broadcasters to provide service to non-cable households.[67] The critical governmental interest, reflected in the Act, was described by the Supreme Court as the preservation of over-the-air broadcasting.[68] More specifically, the congressionally-adopted governmental interest identified in *Turner* was the protection of the interests of over-the-air television viewers -- *i.e.*, viewers whose interests were not reflected in the carriage decisions of cable operators nor in the viewing options available to cable subscribers.[69] Thus, the focus of the government interest in *Turner* is not the economic health of broadcasting per se, but the benefits that broadcasting provides to consumers.[70] In sum, the critical factor in interpreting the intent of the statute and in the constitutional analysis of it is that it is designed "to provide over-the-air viewers who *lack* cable with a rich mix of over-the-air programming by guaranteeing the over-the-air stations that provide such programming with the extra dollars that an additional cable audience will generate" and to assure the over-the-air public "access to a multiplicity of information sources."[71] With respect to mandatory dual carriage, all broadcast stations are required to build a digital facility and broadcast a digital signal.[72] Thus, cable carriage is not needed to ensure that non-cable, over-the-air viewers have access to digital broadcast signals. Broadcasters advocating mandatory dual carriage have not demonstrated that non-cable households would benefit from more or better broadcast programming if stations have mandatory dual carriage.[73] Local analog broadcasters are already carried today – either pursuant to must carry or retransmission consent – on virtually every cable system in their market.[74] We have no evidence that the absence of a dual carriage requirement will substantially diminish the availability or quality of broadcast signals available to non-cable subscribers. A small number of broadcasters that have demonstrated legitimate financial hardship if they were required to build their digital facilities have been granted extensions, but the hardship is not due to lack of cable carriage.[75] The absence of a dual carriage requirement might in fact encourage broadcasters to

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[67] *See* discussion of harm to local broadcast stations identified by Congress in *Turner II*, 520 U.S. at 209-14 (referring to Congress's concern that the harm to stations denied carriage was "serious risk of financial difficulty," that they would "deteriorate to a substantial degree or fail altogether," and that "the viability of a broadcast station depends to a material extent on its ability to secure cable carriage"); *see also id.* at 222 ("Must carry is intended not to guarantee the financial health of all broadcasters, but to ensure a base number of broadcasters survive to provide service to non-cable households.").

[68] *See id.* at 194, 197.

[69] *See id.* at 222 ("Mandatory carriage is intended not to guarantee the financial health of all broadcasters, but to ensure that a base number of broadcasters survive to provide service to noncable households.").

[70] *Id.* (emphasis added).

[71] *Id.*, quoting *Turner I*, 512 U.S. at 663.

[72] *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809 (1997). *See also DTV Build-Out*, 18 FCC Rcd 22705 (2003). As of February 3, 2005, 86.4% of stations nationwide are on the air in digital. *See* FCC website information at http://www.fcc.gov/mb/video/files/dtvonairsum.html (last viewed Feb. 9, 2005).

[73] We note that Congress has recently enacted a dual carriage requirement under very limited circumstances. The Satellite Home Viewer Extension Reauthorization Act ("SHVERA"), Pub. L. No. 108-447, § 210, 118 Stat. 2809, 3393 (2004), requires a phase-in of mandatory dual carriage only in Alaska and Hawaii by satellite carriers with more than five million subscribers. Congress may, of course, decide to impose a dual carriage requirement in situations in which it finds it necessary to further an important governmental interest. By imposing a dual carriage requirement in only two states, Congress implicitly determined that the benefits and burdens of dual carriage in Alaska and Hawaii with respect to satellite carriers are different from those in the contiguous United States.

[74] *See* NCTA Comments at 8.

[75] *See DTV Build-Out*, 18 FCC Rcd 22705, *supra* note 72.

produce a "rich mix of over-the-air programming" in order to convince cable operators to voluntarily carry their digital signal. Furthermore, the goal of the DTV transition is not to support the ongoing existence of two 6 MHz channels for each broadcast licensee, but rather to transition from one 6 MHz analog allocation to one 6 MHz digital allocation, with the anticipated return of one 6 MHz allocation.

19. **Promoting the widespread dissemination of information from a multiplicity of sources.** The second of the three interrelated governmental interests identified in *Turner* is "promoting the widespread dissemination of information from a multiplicity of sources."[76] Discovery argues that if the Commission were to mandate dual carriage, it would allow a single broadcaster to use up to 12 MHz of cable capacity.[77] Discovery comments that the second 6 MHz channel requested by broadcasters could instead be used by a cable operator to provide as many as a dozen diverse non-broadcast programming services offered on a compressed digital basis.[78] Cable industry commenters also argue that most broadcast stations are upconverting analog signals to a standard definition digital format, and that such duplicative broadcast programming does not contribute to program diversity.[79] On the other hand, CEA argues that dual carriage assures broadcasters and programmers of carriage for digital programming, thus motivating them to produce original digital programming, that will, in turn, provide consumers with incentive to purchase digital receivers.[80] On balance, we find that the current record fails to demonstrate that dual carriage is needed to further this governmental interest because program diversity is not promoted under a dual carriage requirement, given that it would not result in additional sources of programming and that digital programming largely simulcasts analog programming.

20. ***Promoting fair competition in the market for television programming.*** The third important governmental interest identified in *Turner* is promoting fair competition in the market for television programming. While a majority of the Court agreed that this is an important governmental interest, only four justices found that this interest was achieved by the must carry statutory requirements.[81] Based on our previous conclusions – *i.e.*, that dual carriage is not needed to further the governmental interests found by a majority of the Court, it is unnecessary to consider this third interest in great detail. The anti-competitive concerns cited by Congress and the Supreme Court stemmed from the increasing vertical integration and penetration of the cable industry in 1992.[82] Commercial Broadcasters

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[76] *Turner II*, 520 U.S. at 189-90 (also identifying a governmental purpose of the highest order in ensuring public access to a multiplicity of information sources). *See Turner I*, 512 U.S. at 663.

[77] *See* Discovery FNPRM Comments at 5.

[78] *See id.*

[79] *See, e.g.*, NCTA FNPRM Comments at 10-11 (compelling digital programming would attract viewers and cable operators). *See also* A&E FNPRM Comments at 3-4; 16, citing *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790-91 (1978) (*quoting Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976)) (capacity occupied by dual carriage reduces capacity available for non-broadcast programming services).

[80] *See* CEA FNPRM Comments at 4; *see also* KSLS FNPRM Comments at 3. Noncommercial Broadcasters state that NCE stations plan to air: (1) local educational interactive services; (2) coverage of state and local government activities; and (3) programming geared to minority audiences. *See* Noncommercial Broadcasters FNPRM Comments at Appendix 4-6; and Maranatha FNPRM Comments at 7.

[81] *See Turner II*, 520 U.S. at 225-29 (Breyer, J., concurring in part).

[82] *See id.* at 197 ("Cable served at least 60 percent of American households in 1992, . . . and evidence indicated cable market penetration was projected to grow beyond 70 percent."). *See also id.* at 198 ("In the late 1980s, 64 percent of new cable programmers were held in vertical ownership.").

claim that cable operators still act as gatekeepers as they serve nearly 70% of American households,[83] and compete with local broadcast stations for advertising dollars. They contend that the enhanced services that DTV makes possible directly compete with cable services, resulting in greater disincentives for cable to afford digital broadcasters access to their audience.[84] Cable operators and programmers counter that such concerns about competition for local advertising are misplaced.[85]

21. Court TV urges the Commission to recognize the central premise of broadcasting -- *i.e.*, that the medium has the inherent ability to reach viewers over-the-air independent of cable carriage.[86] HBO adds that broadcasters use analog retransmission consent/must carry rights to secure cable channel capacity for their affiliated cable networks.[87] The Filipino Channel argues that dual carriage, even for a limited period of time, would foreclose carriage options for many cable networks.[88]

22. In many respects, competition in the MVPD market has increased since 1992, although the market for the delivery of video programming to households continues to be characterized by substantial barriers to entry.[89] The record, however, does not evidence a connection between mandating dual carriage and remedying any allegations of cable operators' anti-competitive action against local broadcast stations. Because operators must carry local broadcaster's analog signal, there is no obvious need for cable operators to carry two signals for each local station, and it has not been proven necessary to guarantee such access for both analog and digital signals to ensure fair competition. We believe the burden is on the advocates of dual carriage to prove this competitive necessity and that speculative allegations in this regard are inadequate in light of the burden on cable operators and cable programmers competing for cable access.

23. ***Advancing the Digital Transition.*** Broadcast commenters state that a rapid transition from analog to digital broadcast signals is an important governmental interest that can justify burdening speech protected by the First Amendment. They contend that dual carriage is necessary to achieve a swift

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[83] *See* Commercial Broadcasters Comments, Appendix A ("Implications of the Adoption of Digital Must-Carry on the Speed of the Broadcast DTV Transition: A Scenario Analysis," prepared by Dr. Joseph S. Kraemer & Richard O. Levine, LECG Consulting) (hereinafter "Kraemer Analysis") at 29-31.

[84] *See* Commercial Broadcasters at 18. *See also* Noncommercial Broadcasters at 22; and Commercial Broadcasters FNPRM Reply Comments at 20.

[85] *See* AT&T FNPRM Reply Comments at 14, citing *Turner II*, 520 U.S. at 225. Hereinafter, all references to AT&T's comments are those submitted by that entity prior to its eventual merger with Comcast.

[86] *See* Court TV FNPRM Reply Comments at 9.

[87] *See* HBO FNPRM Comments at 4. *See also* SBCA FNPRM Comments at 3.

[88] *See* Filipino Channel FNPRM Comments at 29. According to the Filipino Channel, some cable programming networks have been placed on waiting lists, in which they have been promised carriage by cable operators as capacity becomes available. *See id.*

[89] *See Annual Assessment on the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Eleventh Annual Report, FCC 05-13, at ¶ 7 (rel. Feb. 4, 2005) (most subscribers continue to receive their video programming from a franchised cable operator, although cable's market share continues to decline as other MVPDs, most notably DBS, have increased their share of the total number of MVPD subscribers). *See also Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, 17 FCC Rcd 12124, 12143-44 (2002) ("*Program Access Report & Order*") (market conditions still warrant prohibition on exclusive contracts for vertically integrated programmers and affiliated cable operators). *But see* Comcast Ex Parte in CS Docket No. 98-120 (filed Oct. 16, 2003) (citing growth of competition to cable and cable's diminished role as gatekeeper).

and successful DTV transition.[90] NCTA counters that Congress never expressed that hastening the end of the transition is a governmental interest, and nor has the Supreme Court "embraced any such interest" in upholding must carry requirements.[91] CEA, on the other hand, states that some form of dual carriage is necessary for public acceptance of digital television technology because it will spur broadcasters to produce digital television programming, which, in turn, will convince consumers to purchase DTV receivers.[92] Maranatha argues that consumers will not have the incentive to buy DTV receivers until they can actually receive digital broadcast programming through their local cable systems.[93] AT&T and others in the cable industry counter that dual carriage provides no incentive for consumers to purchase digital television sets, particularly when broadcasters are creating little or no original content.[94]

24. A swift digital television transition and the return of the analog spectrum for other uses are important governmental concerns.[95] We find that the imposition of a dual carriage requirement, however, is not necessary to complete the transition. Many factors are necessary for the transition to be successful, such as consumer acceptance of a new type of television service and rapid digital receiver penetration.[96] The top ten cable operators (representing more than 85% of cable subscribers nationwide) have committed to deploying high-definition services and are fulfilling that commitment.[97] More recently, NCTA reports that the HDTV carriage data reflect that more and more cable households are receiving HDTV programming: (1) the number of local TV markets in which consumers can now receive a package of HDTV services from their cable operator has grown to 184 (out of 210), including all of the top 100 DMAs; (2) the number of local digital broadcast stations being carried voluntarily by cable systems increased to 504, up from 304 in December 2003; (3) of the 108 million U.S. TV households

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[90] *See* Commercial Broadcasters FNPRM Comments at 8; Noncommercial Broadcasters FNPRM Comments at 22; Univision FNPRM Comments at 5.

[91] *See* NCTA FNPRM Comments at 8-9.

[92] *See* CEA FNPRM Comments at 6.

[93] *See* Maranatha FNPRM Comments at 5.

[94] *See* AT&T FNPRM Reply Comments at 16; Time Warner FNPRM Comments at 13-18; NCTA FNPRM Comments at 10-14.

[95] *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (specifying conditions under which the transition to digital would be completed by the end of 2006); Congressional Budget Office, "Completing the Transition to Digital Television," at 8-11 (Sept. 1999). In an effort to promote the digital television transition, the Commission adopted DTV tuner requirements in 2002, which was designed to facilitate the transition to digital television by promoting the availability of reception equipment, as well as to protect consumers by ensuring that their television sets continue to work in the digital world just as they do today. *See DTV Tuner Second Report and Order*, 17 FCC Rcd 15978, *supra* note 3. In addition, the Commission adopted last year a redistribution control system, also known as the "broadcast flag," for digital broadcast television, which is intended to prevent the mass indiscriminate redistribution of digital television in order to foster the transition to digital TV and the digital age. *See Broadcast Flag Order*, 18 FCC Rcd 23550, *supra note* 3.

[96] *See Congressional Budget Office September 1999 Report* at ix-xi. To ensure that new television receivers include a DTV tuner on a schedule as close as economically feasible to the December 31, 2006, target completion date for the DTV transition, the Commission adopted an Order requiring that all TV receivers manufactured in the U.S. with screen sizes greater than 13 inches, and all TV receiving equipment, such as VCRs and DTV players/recorders, have the capability of receiving DTV signals after July 1, 2007. *See Digital Tuner Second Report and Order,* 17 FCC Rcd 15978, *supra* note 3.

[97] *See* Letter from Robert Sachs, President and CEO of NCTA, to FCC Chairman Michael Powell (May 1, 2002). *See* NCTA Comments in MB Docket No. 02-145, at 33-35 (filed July 29, 2002). *See also HDTV at a Glance*, Multichannel News, Special Report on HDTV, June 9, 2003, at 8A-9A.

today, 92 million are now passed by a cable system that offers a package of HDTV programming; and (4) 18 cable networks now offer HD programming during some or all of their network schedules, in broad genres reflecting movies, sports, and general interest.[98]

25. The voluntary carriage of network television stations by these operators, as well as carriage of high definition digital programming from non-broadcast sources like HBO, are more likely to spur the sale of digital television equipment (thereby, facilitating the transition) than the forced dual carriage of all television stations.[99] We thus decline to impose dual carriage requirements that burden speech in the absence of record evidence showing dual carriage is necessary for a timely completion of the transition.[100]

26. ***Fifth Amendment Argument.*** NCTA argues that dual carriage would constitute an uncompensated taking of private property in violation of the Fifth Amendment to the Constitution, especially where, as here, Congress has not clearly authorized such a requirement.[101] NAB responds, in part, that the mere fact that a dual carriage rule might exact some financial toll from cable operators would not render mandatory dual carriage a taking.[102] Given that we have declined to impose dual carriage on other grounds, we need not address the cable industry's Fifth Amendment argument.[103]

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[98] *See* NCTA Ex Parte in CS Docket No. 98-120, at 2 (filed Feb. 3, 2005); NCTA Ex Parte in CS Docket No. 98-120, at 1 (filed Jan. 26, 2005). *See also* NCTA Ex Parte in CS Docket No. 98-120 (filed Feb. 2, 2005) ("The recently-concluded public television digital cable carriage agreement is further evidence that voluntar[y] carriage of digital stations will only increase over time."); Comcast Ex Parte in CS Docket No. 98-120, at 1 (filed Feb. 1, 2005) ("Comcast is now providing high-definition television service in 62 markets. Comcast currently has digital carriage agreements with public broadcasters in 45 markets.").

[99] *See First Report and Order*, 16 FCC Rcd at 2605 ("[B]roadcast stations operating only with digital signals are entitled to mandatory carriage under the Act.").

[100] In the *Digital Must Carry NPRM*, we also sought comment on whether the availability of better antennas affects the necessity of mandatory dual carriage. *See* 13 FCC Rcd at 15132. To the extent that some consumers can and would take advantage of the advances in antennas and A/B switches, the availability of such technology would also weigh against the imposition of a dual carriage requirement. Consistent with past Congressional findings and *Turner*, however, antennas and A/B switches alone cannot satisfy the governmental interests at stake or replace the need for mandatory carriage. *See Turner II*, 520 U.S. at 220-21.

[101] *See* NCTA NPRM Comments at 32-33; NCTA FNPRM Comments at 22; NCTA Ex Parte Letter in CS Docket No. 98-120 (filed July 9, 2002) (submitting Professor Laurence H. Tribe's Fifth Amendment analysis of issue, *see infra* note 127).

[102] *See* NAB Ex Parte Letter in CS Docket No. 98-120 (filed Aug. 5, 2002) (submitting a rebuttal to Professor Tribe's contentions, *see infra* note 127).

[103] Similarly, the courts have declined to address the constitutionality of cable must carry under the Fifth Amendment when the First Amendment issue is controlling. *See, e.g., Quincy Cable TV*, 768 F.2d 1434 , *supra* note 52 (Court did not address operator's Fifth Amendment contentions because it found that the Commission's must carry rules were infirm under the First Amendment); *Turner v. FCC*, 910 F. Supp. 734, 746 (D.C.D.C. 1995) (district court dismissed takings claims of cable operators without prejudice stating that,"[a]fter the constitutionality of sections 4 and 5 are definitively resolved, Plaintiffs may reassert their takings claim before the appropriate forum." In this instance, the District Court did not want to dilute the issues the Supreme Court asked it to address on remand.). *But see Satellite Broadcasting and Communications Ass'n v. FCC*, 275 F.3d 337 (2001), *cert. denied*, 536 U.S. 922 (2002) (Section 338's carry-one, carry-all mandate "merely places conditions on their use" of the statutory license and does not involve "required acquiescence"; therefore the provision does not effect a taking of private property under the Fifth Amendment.).

27. *Conclusion.* We have analyzed the governmental interests identified in *Turner*, additional governmental interests proposed by the broadcast industry, and policy concerns. We find that there has not been an adequate showing that dual carriage is necessary to achieve any valid governmental interest. Therefore, in the absence of a clear statutory requirement for dual carriage, we decline to impose this burden on cable operators.

B. Primary Video/Multicast Carriage

28. In the *First Report and Order*, the Commission examined how to apply the "primary video" carriage limitation if a broadcaster chooses to broadcast multiple standard definition digital television streams, or a mixture of high definition and standard definition digital television streams.[104] Section 614(b)(3)(A) states:

> A cable operator shall carry in its entirety, on the cable system of that operator, the *primary video*, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking [interval] or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.[105]

Largely parallel provisions are contained in Section 615(g)(1) for noncommercial stations.[106]

29. In the *First Report and Order*, the Commission recognized that "the terms 'primary video' as used in sections 614(b)(3) and 615(g)(1) are susceptible to different interpretations,"[107] and that "[t]he legislative history does not definitively resolve the ambiguity regarding the intended application of the term 'primary video' as used in [the multicasting] context."[108] The Commission thus analyzed the term within its statutory context, considered the legislative history, and examined the technological developments at the time the must carry provisions were enacted.[109] As a result of dictionary definitions and legislative history indicating that "must carry provisions were not intended to cover all uses of a signal," the Commission stated that "[b]ased on the record currently before us, we conclude that 'primary video' means a single programming stream and other program-related content."[110] As a result, the Commission held that if a digital broadcaster elects to divide its digital spectrum into several separate, independent, and unrelated programming streams, only one of these streams is considered primary and

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[104] *See* 16 FCC Rcd at 2620-22. In addition to being able to broadcast one, and under some circumstances two, high definition digital television programs, the Advanced Television Systems Committee ("ATSC") DTV standard allows for multiple streams, or "multicasting," of standard definition digital television programming at a visual quality better than the current analog standard.

[105] 47 U.S.C. § 534(b)(3) (emphasis added).

[106] *See* 47 U.S.C. § 535(g)(1).

[107] 16 FCC Rcd at 2620.

[108] *Id.* at 2621

[109] *See id.* at 2620-22.

[110] *Id.* at 2620-21.

entitled to mandatory carriage.[111] Under this determination, the broadcaster elects which programming stream is its primary video, and the cable operator is required to provide mandatory carriage only of that designated stream.[112]

30. Several commercial and noncommercial broadcasters seek reconsideration of our interpretation of the term "primary video."[113] They contend that we wrongly concluded that when a digital signal becomes eligible for mandatory carriage, cable operators are only required to carry a single video stream. In the view of some broadcast petitioners, "primary video" means all video that is included in a broadcaster's digital signal.[114] Other broadcast petitioners suggest that since all video contained in analog broadcast signals has been available free to over-the-air viewers, the "primary video" of a digital signal should be deemed to include video programming that is available "free of charge."[115] Disney specifically asks us to adopt a definition of "primary video" that requires "full carriage of the entire 19.4 Mbps bit stream of a local broadcaster's digital signal, except for those ancillary and supplementary services expressly excluded by statute."[116] Disney asserts that such a standard will impose no greater burden on cable operators than that created by the existing analog must carry requirements, or by carriage of an HDTV signal.[117]

31. More specifically, the broadcast petitioners argue that the Commission's definition of "primary video" is not supported by the statutory language and the accompanying legislative history.[118] Noncommercial Broadcasters state that because of the unavailability of a plain meaning interpretation, the Commission must look to the Act as a whole to determine what Congress meant by a broadcaster's "primary video."[119] They submit that, because of the ambiguity of the statute, the most reasonable interpretation of the term "primary video" includes "the package of video and audio digital services transmitted by the broadcaster free and over the air to viewers."[120] Similarly, Commercial Broadcasters argue that the word "primary" is a generic adjective that may be used with singular or plural noun forms, as in the phrases "primary elements" and "primary colors."[121] They state that the Commission should not have applied a literal definition, but rather interpreted for the new digital context what was intended by the term for the analog situation.[122]

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[111] *See id.*

[112] *See id.*

[113] *See, e.g.,* Commercial Broadcasters Petition at 10-16; Noncommercial Broadcasters Petition at 4-14; Telemundo at 2-10; Broadcast Group Petition at 5-6; Disney Petition at 3-17.

[114] *See, e.g.,* Tribune Comments at 3; Paxson Petition at iii, 10-14; Fox Comments at 5-6.

[115] *See, e.g.,* Broadcast Group Petition at 5; Telemundo Petition at 4-5.

[116] Disney Petition at i.

[117] *See id.*

[118] *See, e.g.,* Noncommercial Broadcasters Petition at 5-10; Paxson Petition at iii; Disney Petition at 7-9.

[119] *See* Noncommercial Broadcasters Petition at 6.

[120] *Id.* at 7 (this "primary video" package can consist of a single HDTV stream and accompanying audio, or as many as six multicast SDTV program streams).

[121] *See* Commercial Broadcasters Petition at 11. *Accord* Paxson Petition at 12.

[122] *See* Commercial Broadcasters Petition at 12.

32. NCTA, Time Warner, and other parties ask us to deny the petitions.[123] They contend that a plain reading of the statute clearly indicates a limited carriage obligation, and that, even if there are other interpretations of the provision, the Commission's interpretation is a reasonable one, because it gives meaning to the word "primary" and is consistent with the common usage and meaning of the term.[124] Additionally, NCTA contends that the Commission's interpretation is consistent with the underlying policy objectives of the Act and Congress's clear intention to limit carriage obligations in light of First Amendment concerns.[125] NCTA argues that carriage of multiple video programming streams would multiply the burden on cable operators as well as the unfairness to cable program networks without serving any of the purposes of the must carry provisions of the statute, thereby raising First Amendment infirmities.[126] NCTA states that the Commission is compelled to avoid such a construction of the Act even if it were to find the term "primary video" to be at all ambiguous.[127] According to Professor Tribe's filing on behalf of the NCTA, "forcing cable operators to carry multiple video streams of digital broadcasters would abridge the editorial freedom of cable operators, harm cable programmers, and invade the right of audiences to choose what they want to view – all without promoting any of the governmental interests contemplated by Congress in enacting the must-carry rules, or any of the interests approved by the Supreme Court in Turner I and Turner II."[128] Professor Tribe also argues that mandatory carriage of multiple streams of video programming would result in a permanent, physical occupation of a substantial amount of a cable operator's capacity, raising "substantial issues under the Fifth Amendment's Takings Clause and under the separation of powers."[129]

33. After consideration of all the arguments and evidence presented on this issue, we affirm our earlier decision, and decline, based on the current record before us, to require cable operators to carry any more than one programming stream of a digital television station that multicasts. On reconsideration, we acknowledge, however, that the language of the Act may be less definitive than portions of our earlier decision suggested. This conclusion is, in fact, more consistent with our observations in the *First Report and Order* "that the terms 'primary video' as used in sections 614(b)(3) and 615(g)(1) are susceptible to different interpretations,"[130] and that "[t]he legislative history does not definitively resolve the ambiguity regarding the intended application of the term 'primary video' as used in this context."[131] As explained below, however, we continue to hold that the best construction of the must-carry provisions, based on the current record before us, is that cable operators need not carry more than one programming stream.

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[123] *See, e.g.*, NCTA Opposition at 8-13; Time Warner Opposition at 11-16.

[124] *See, e.g.*, NCTA Opposition at 9; Time Warner Opposition at 11 (broadcasters' interpretation is contrary to plain meaning), 13 (the statutory language suggests that there can be only one video transmission that is first in rank).

[125] *See* NCTA Opposition at 11.

[126] *See id.* at 11-12.

[127] *See id.* at 12. NCTA also submitted an analysis of the issue by Professor Laurence H. Tribe. *See* NCTA Ex Parte Letter in CS Docket No. 98-120 (filed July 9, 2002) (hereinafter "*Tribe Primary Video Analysis*") (containing a constitutional analysis of the multicast carriage issue entitled: "Why the Commission Should Not Adopt a Broad View of the 'Primary Video' Carriage Obligation"). *Contra* NAB Ex Parte Letter in CS Docket No. 98-120 (filed Aug. 5, 2002) (hereinafter "Jenner & Block Response to Tribe Analysis") (submitting a rebuttal to Professor Tribe's constitutional analysis).

[128] *See Tribe Primary Video Analysis* at 2.

[129] *Id.* at 2, 12-18.

[130] 16 FCC Rcd at 2620.

[131] *Id.* at 2621.

34. We recognize that Sections 614(b)(3) and 615(g)(1) do not directly translate to digital technology generally, much less to associated multicasting capabilities specifically, and thus do not appear to compel a particular result for multicasting must-carry. In the *First Report and Order*, we noted that "the incorporation of the primary video construct into the Act in 1992 was reasonably contemporaneous with the gradual change in common understanding of the new television service . . . to DTV (digital television) with the ability to broadcast high definition television, SDTV (standard definition television) with multicasting possibilities, as well as the broadcast of non-video services."[132] On reconsideration, we agree with the broadcasters that Sections 614(b)(3) and 615(g)(1) appear to have been written with analog technology in mind, given references to "line 21," "vertical blanking interval," and "subcarriers," which are not applicable in digital technology.[133] Thus, we conclude that Congress – although aware of digital technology when it drafted the must-carry requirement[134] – did not expressly compel a particular result with respect to the application of "primary video" to digital television generally, and multicasting specifically.[135]

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[132] 16 FCC Rcd at 2621.

[133] *See, e.g.*, NAB Petition at 12.

[134] *See* 16 FCC Rcd at 2621-2622; *see also* H.R. Rep. No. 104-204(I), 104th Cong., 1st Sess. 220 (1995).

[135] We reject, however, the argument of Disney and other broadcast petitioners that the Commission's definition of "primary video" for purposes of Section 614(b)(3)(A) of the Act is somehow inconsistent with Section 614(b)(3)(B), which provides that "[t]he cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991) or any successor regulations thereto," 47 U.S.C. § 534(b)(3)(B). *See* Disney Petition at 9-11; Broadcast Group Petition at 14. *See also* NAB/MSTV/ALTV Petition at 16-17; Telemundo Petition at 3-4; Paxson Petition at 10-12. The legislative history of Section 614(b)(3)(B) does not indicate any connection to the carriage of multiple video programming streams of a single broadcaster. According to the House Report accompanying the 1992 Cable Act, "[s]ubsection (b)(3)(B) prohibits 'cherry picking' of programs from television stations by requiring cable systems to carry the entirety of the program schedule of television stations they carry . . . ." H.R. Rep. No. 102-628, at 93 (1992). In other words, the point of Section 614(b)(3)(B) is "to prevent[ ] cable operators from using portions of the signals of different broadcasters to create composite channels in an effort to increase the audience for cable programming." *Id.* at 58. That provision, therefore, requires cable operators to carry the entire program lineup that is assembled by a broadcaster on a particular channel that is entitled to carriage pursuant to Section 614(b)(3)(A). We agree with Time Warner Cable that it has nothing to do with carriage of multiple channels or program lineups. Section 614(b)(3)(B) simply requires that when a cable operator carries an eligible primary video programming stream, it must carry that stream in its entirety and may not provide a composite, cherry-picked programming stream. If Section 614(b)(3)(B) meant what broadcasters say it means, then Section 614(b)(3)(A) would be a nullity.

We also disagree with some broadcasters' argument that, as a policy matter, the Commission's interpretation of "primary video" creates potential "administrative problems." *See, e.g.*, Disney Petition at 11; Paxson Petition at 15. Disney, for example, asserts that a digital broadcast signal may be configured in a variety of ways throughout the day, requiring the broadcaster, at multiple times throughout the day, to have to ascertain whether the programming elements being televised are independent or related, program-related, or otherwise. *See* Disney Petition at 11-12. They surmise that there will thus be constant disputes as to whether particular multicast signals are program-related (and thus required to be carried) or unrelated (therefore not required to be carried). Although a mandatory multicast carriage policy could eliminate the need to determine what is or is not program related, we do not find that a compelling reason to read the term "primary video" as requiring cable operators to carry more than one programming stream. We will define in a subsequent Report and Order in this docket the parameters of what is program-related in the digital context, which we believe will assist in alleviating the type of dispute that some broadcasters predict.

35. Recognizing that the statutory language is ambiguous, however, of course does *not* mean that we are now *compelled* to interpret the statute differently than the Commission previously did. Rather, given that "Congress has not directly addressed the precise question at issue"[136] -- i.e., "the statute is silent or ambiguous with respect to the specific issue,"[137] the question for us is to derive a "reasonable interpretation" of the meaning of "primary video."[138]

36. Given the ambiguity of the language of the statute, we consider its legislative history. As the Commission acknowledged in the *First Report and Order*, however, "[t]he legislative history does not definitively resolve the ambiguity regarding the intended application of the term 'primary video' as used in [the multicasting] context."[139] The legislative history indicates that "the must carry provisions were not intended to cover all uses of a signal,"[140] but they do not precisely specify which portion of a signal is entitled to carriage and which is not. In other words, "[t]he term primary video, as found in Sections 614 and 615 of the Act, suggests that there is some video that is primary and some that is not,"[141] but the legislative history of these sections does not suggest precisely which video signal(s) is (are) primary and which is (are) not. The legislative history of subsequently enacted Section 336, which relates not to cable carriage obligations but mostly to digital television implementation, likewise does not reveal any clear intention of Congress with respect to the multicasting must-carry issue.

37. We next focus on the underlying purposes of the statutory provisions, and evaluate whether requiring cable operators to carry more than one programming stream of a multicasting station would fulfill those purposes. In *Turner II*, a majority of the Supreme Court recognized as "important" two "interrelated interests" that Congress sought to further through the must-carry provisions: (1) preserving the benefits of free, over-the-air local broadcast television for viewers, and (2) promoting "the widespread dissemination of information from a multiplicity of sources."[142] As explained below, we cannot find on the current record that a multicasting carriage requirement is necessary to further either of these goals. Based on the current record, we find a reasonable interpretation of the Act is to require cable operators to carry one programming stream.

38. Significantly, there is nothing in the current record to convince us that mandatory carriage of all multiple streams of a broadcaster's transmission is necessary to achieve either of these goals. In the analog context, broadcasters could invoke explicit Congressional findings that the benefits of free, over-the-air television for viewers would be jeopardized without must carry. Congress, however, has made no such findings regarding multicast must carry and broadcasters have not made a convincing argument that over-the-air broadcasting would be jeopardized in the absence of mandatory multicasting. Unlike in the analog carriage debate, here broadcasters fail to substantiate their claim that mandatory multicasting is essential to ensure station carriage or survival.[143] Broadcasters argue that carriage of

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[136] *Chevron USA Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984).

[137] *Id.*

[138] *See id.* at 844.

[139] 16 FCC Rcd at 2621.

[140] *Id.*

[141] *Id.* at 2620.

[142] *Turner II*, 520 U.S. at 189-190 (quoting *Turner I*, 512 U.S. at 662); *see id.* at 225-226 (opinion of Breyer, J., concurring in part).

[143] *See Turner II*, 520 U.S. at 187 ("Congress drew reasonable inferences from substantial evidence before it to conclude that in the absence of must-carry rules, significant numbers of broadcast stations would be refused carriage.") (internal quotations omitted).

multicast streams is essential to help them develop and support additional programming streams,[144] but they have not made the case on the current record that these additional programming streams are essential to preserve the benefits of a free, over-the-air television system for viewers. Broadcasters will continue to be afforded must carry for their main video programming stream, which can be in standard definition or high definition, and any additional material that is considered program-related. Broadcasters can also rely on the marketplace working without mandatory carriage in order to persuade cable systems to carry additional streams of programming.[145] There is evidence from the record, as well as news accounts, that cable operators are voluntarily carrying the multiple streams of programming of some broadcast stations, including public television stations, that are currently multicasting.[146] Indeed, the Association of Public Television Stations and the NCTA recently announced an agreement that involves cable operators carrying up to four programming streams of at least one public TV station in a DMA during the transition from analog to digital technology, and *every* public TV station in a DMA after the transition, subject to certain nonduplication contingencies.[147] Under these circumstances, the interests of over-the-air television viewers appear to remain protected.

39. Likewise, based on the current record, there is little to suggest that requiring cable operators to carry more than one programming stream of a digital television station would contribute to promoting "the widespread dissemination of information from a multiplicity of sources." Under a single-channel must-carry requirement, broadcasters will have a presence on cable systems. Adding additional channels of the same broadcaster would not enhance source diversity. Furthermore, programming shifted from a broadcaster's main channel to the same broadcaster's multicast channel would not promote diversity of information sources. Indeed, mandatory multicast carriage would arguably diminish the ability of other, independent voices to be carried on the cable system.[148]

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[144] *See, e.g.*, Noncommercial Broadcasters Ex Parte in CS Docket No. 98-120 (filed Mar. 20, 2003); Disney Petition at 7-11; CBS Television Network Affiliates Association Ex Parte in CS Docket No. 98-120, at 13-16 (filed Jan. 13, 2004); NBC Television Affiliates Association Ex Parte in CS Docket No. 98-120, at 17-18 (filed Jan. 8, 2004).

[145] In this regard, we note that, despite the assertions made by some commercial broadcasters about the need for mandatory multicast carriage, some stations believe, nonetheless, that "network and affiliates can persuade cable operators of the value of carrying broadcast-digital channels even if the law doesn't require it." Steve McClellan, "NBC: Multicasting Might Fly Even Without Must-Carry," Broadcasting & Cable (Jan. 20, 2004) (based on interview with NBC Television Network Group president Randy Falco).

[146] *See, e.g.*, Comcast Ex Parte in CS Docket No. 98-120, at 2 (filed Oct. 4, 2004) (Comcast has agreed with many PBS affiliates to multicast carriage arrangements); Comcast Ex Parte in CS Docket No. 98-120, at 2 (filed Feb. 3, 2005) ("Comcast has entered into voluntary agreements that include carriage of multicast digital signals with over 130 commercial broadcast stations located in 62 markets across the nation. The number of these agreements has steadily increased as broadcasters have created new and innovative local programming. As a result of the agreements Comcast has entered into, Comcast currently carries 26 multicast digital signals and is adding more each month as broadcasters continue to launch their digital services.").

[147] *See* Letter from NCTA and APTS to FCC Chairman Michael K. Powell, CS Docket No. 98-120 (Jan. 31, 2005) ("The PTV digital programming to be carried by a cable operator will include up to four streams of free non-commercial digital programming (high definition or standard definition), if a station chooses to offer that many streams. The cable operator will also carry associated material, including formal educational and homeland security or other emergency public safety information. Carriage of multiple digital public television stations' multicast streams is subject to limits on duplication of programming.").

[148] We note that the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters recommended that broadcasters offer independent and unaffiliated parties or programmers access to their programming streams, in exchange for any "enhanced economic benefit" that broadcasters realize from multicasting. *See* Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting* (continued....)

40. Additionally, no persuasive case has been made on the current record that a multicasting carriage requirement will facilitate the digital transition. High quality programming in a digital format is a major factor that will drive this transition. Some broadcasters explain that they are reluctant to invest in additional programming streams absent an assurance of carriage.[149] In response, NCTA states that cable operators "*want* to carry HDTV and other compelling digital broadcast content that is desired by their customers,"[150] and that they want to carry local programming to distinguish their offerings from satellite.[151] NCTA also cautions that giving "shelf space" to broadcasters might lead to carriage of "infomercials, home shopping, or other low value content."[152] NCTA therefore suggests that a guaranteed carriage requirement would diminish incentives for broadcast stations to produce high quality programming, which would "reduce incentive for consumers to switch to digital TV."[153]

41. Given the lack of a meaningful showing on the current record that mandatory carriage of more than one programming stream is necessary to achieve any of the goals discussed above, we determine not to impose such a requirement. We thus find it a reasonable construction of the must-carry provisions of the Act, on the record before us and in light of the Supreme Court's precedent,[154] not to require cable operators to designate capacity or "shelf space" for multicasting programming streams at the expense of other competing interests.[155]

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the Digital Broadcasting Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters, at 54-55 (1998). This practice may enhance diversity and the public interest, although we take no position on whether a future record that demonstrated evidence of this practice would change the result for purposes of the multicasting must-carry issue before us today. In a number of pending proceedings, the Commission is considering broadcasters' public interest obligations in the Digital Age. Our interpretation of Sections 614 and 615 in this Order does not prejudge the outcome of any of those proceedings, which will continue.

[149] *See* Telemundo Petition at 7; NBC Television Affiliates Special Submission in CS Docket No. 98-120, at 3 (filed Jan. 8, 2004) (lack of a multicast carriage requirement would serve as a barrier to the ability of broadcasters to sustain multicast streams or to launch the ideas they are currently developing for a multicast product, thereby depriving over-the-air viewers from that service), 6-7 ("Implementing these plans requires a substantial investment now in equipment and facilities upgrades, as well as in acquiring and developing programming. Many stations, however, cannot afford to invest a significant portion of their limited resources in developing multicast streams absent the knowledge that such streams will reach the majority of their viewers served by cable. Lack of a multicast carriage requirement is therefore a serious impediment to broadcasters bringing their plans and ideas for multicasting, many of which are in the formative stages today, to fruition."); CBS Network Affiliates January 13, 2004 Ex Parte at iii.

[150] *See* Letter from NCTA to Members of Congress, at 2 (dated Feb. 7, 2005) ("*Letter from NCTA to Members of Congress*"), *available at* http://www.ncta.com/pdf_files/RJS-Letter-to-Congress-2-7-04.pdf. (emphasis in original).

[151] *See, e.g.*, Comcast February 3, 2005 Ex Parte at 10.

[152] *Letter from NCTA to Members of Congress* at 2.

[153] *Id.* at 3.

[154] *See Turner I and II; United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69 (1994).

[155] *See* joint ex parte filed by The Filipino Channel, the Golf Channel, The Inspiration Network, and Outdoor Life Network in CS Docket No. 98-120 (filed Sept. 5, 2002) (a multicasting must-carry requirement would deprive cable networks of available channel slots on cable systems that already lack extant channel capacity; at a minimum, requiring cable systems to give spectrum to broadcasters would render it more difficult for non-broadcast networks to compete for carriage, in violation of the narrow tailoring requirement established in the *Turner* decisions); *see also* Bloomberg/TechTV Ex Parte in CS Docket No. 98-120, at 5-6 (filed Oct. 23, 2003) (arguing same).

42. We also note that cable operators contend that requiring them to carry more than one programming stream would constitute a taking under the Fifth Amendment.[156] Given that we decline to impose such a requirement, we do not reach this issue.

43. Nothing in this Order diminishes the Commission's commitment to completing action on the multiple open proceedings on localism and on the public interest obligations of digital broadcasters. We believe the public interest and localism proceedings are essential components of the Commission's efforts to complete the transition to digital television. The Commission intends to move forward on these decisions within the next few months and complete action in these dockets by the end of the year.

44. Accordingly, we grant in part and deny in part the petitions for reconsideration on this issue and affirm our decision in the *First Report and Order*. Therefore, if a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage. The broadcaster must elect which programming stream is its primary video, and the cable operator is required to provide carriage of that stream. Cable operators can choose to carry additional video programming streams through retransmission consent agreements. As reflected in the statute, cable operators are also required to carry "program-related material," to the extent technically feasible.[157] What constitutes program-related material in the new digital context is defined separately from primary video and will be addressed fully in a subsequent Report and Order in this docket.[158]

IV. PROCEDURAL MATTERS

45. **Paperwork Reduction Act of 1995 Analysis.** This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

46. **Final Regulatory Flexibility Certification.** The Final Regulatory Flexibility Certification is found in Appendix D, *infra*.

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[156] *See Tribe Primary Video Analysis* at 18-23.

[157] *See* 47 U.S.C. § 614(b)(3)(A).

[158] For now, our decision on the program-related issue in the *First Report and Order* should provide sufficient guidance. *See* 16 FCC Rcd at 2622-24. Beyond the examples provided in the *First Report and Order*, we stated that we would continue to look to the three factors enumerated in *WGN v. United Video*, 693 F.2d 622 (7th Cir. 1982), to determine what material is considered program-related if a cable operator is required to carry a broadcaster's digital signal. *See* 16 FCC Rcd at 2624. Information or material that is program-related must be carried, whether it is in the PSIP, another program stream, or elsewhere, so long as it is technically feasible to do so.

V. ORDERING CLAUSES

47. Accordingly, **IT IS ORDERED**, pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, that the petitions for reconsideration filed by the parties listed in Appendix C **ARE GRANTED IN PART AND DENIED IN PART** as indicated above, and that this Second Report and Order and First Order on Reconsideration **IS ADOPTED**.

48. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Second Report and Order and First Order on Reconsideration, including the Final Regulatory Flexibility Certification, to Congress, pursuant to the Congressional Review Act, and also to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

Comments filed in Response to Further Notice of Proposed Rulemaking

A&E Television Networks ("A&E")
American Cable Association ("ACA")
Association of America's Public Television Stations, Public Broadcasting Service, Corporation for Public Broadcasting (collectively "Noncommercial Broadcasters")
AT&T Broadband ("AT&T")
Cablevision
Consumer Electronics Association ("CEA")
Courtroom Television Network
C-Span
DIRECTV
Discovery Communications ("Discovery")
EchoStar Satellite Corporation ("EchoStar")
Entravision
Filipino Channel, *et. al.* ("Filipino Channel")
Gemstar
Home Box Office ("HBO")
Insight/Mediacomm
International Cable Channels
KSLS/KHLS
Maranatha Broadcasting
National Association Of Broadcasters, Association for Maximum Service Television, Association for Local Television Stations (collectively, "Commercial Broadcasters")
National Cable and Telecommunications Association ("NCTA")
National Football League ("NFL")
National Hockey League ("NHL")
Paxson Communications
Satellite Broadcasting and Communications Association ("SBCA")
Starz
STC Broadcasting
TechTV
Time Warner
Univision
Walt Disney Co.

Appendix B

Reply Comments filed in Response to Further Notice of Proposed Rulemaking

A&E Television Networks
Adelphia/Insight/Mediacomm
American Cable Association
Association of America's Public Television Stations, Public Broadcasting Service, Corporation for Public Broadcasting
AT&T Broadband
Benedek broadcasting/Arizona State University/Vermont Educational Television
Comcast Communications
Consumer Electronic Association
Courtroom Television Network, L.L.C.
EchoStar Satellite Corporation
Gemstar
LIN Broadcasting/Midwest/Raycom
Maranatha Broadcasting
Michigan Government Television
National Association Of Broadcasters, Association for Maximum Service Television, Association for Local Television Stations
National Cable and Telecommunications Association
National Datacast
National Hockey League/PGA/Baseball
Ovation, Inc.
Paxson Communications Corporation
Pennsylvania Cable Network
Station's Representatives Association
Time Warner